

BEFORE THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

STATE OF CALIFORNIA

In the Matter of:)	Case No. 2003-010508ADH
)	
MARCO ANTONIO RACHED,)	OAH No. L-2003090550
Owner/Operator)	
)	
RE:d.b.a., MARCO TIRES, aka)	
IN & OUT TIRES,)	
)	
Respondent.)	
)	Hauler No. 1114

DECISION PURSUANT TO STIPULATION

After an administrative complaint was filed in the above-captioned matter, it was submitted by the parties to the Office of Administrative Hearings for a decision, pursuant to a stipulation for settlement and for civil penalties. A telephonic hearing on the matter was held on October 9, 2003, by the agreement of the parties, pursuant to Government Code section 11440.30. Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, presided. Mr. Robert F. Conheim, Staff Counsel, appeared for Complainant and Respondent Marco Antonio Rached appeared on his own behalf. The parties confirmed their written stipulation, a copy of which had been previously provided, and agreed that staff counsel would thereafter provide the stipulation and other exhibits to the undersigned. The written stipulation and related documents are made Exhibit "A" to the record. As the documents were received October 14, 2003, the matter is deemed submitted on that date. Based on the parties' stipulation, and the other papers submitted in the case, including the stipulated factual findings, the undersigned issues the following decision.

FACTUAL FINDINGS

1. On or about August 13, 2003, the California Integrated Waste Management Board (hereafter either "the Board" or "CIWMB") issued an administrative complaint against Respondent Marco Antonio Rached, operator of Marco Tires, also known as In & Out Tires. Respondent individually and doing business as Marco Tires and In & Out Tires is a waste tire hauler.

2. The Board had authority to issue the administrative complaint, and those persons who issued the complaint for the Board did so in their official capacity.

3. Respondent Rached as operator of Marco Tires aka In & Out Tires is responsible for the transportation of waste tires by a person who did not hold a waste tire registration, in the following circumstances:

(A) On February 24, 2003, Board staff in conjunction with the California Highway Patrol inspected all vehicles transporting waste tires into CB Tyres' tire collection center at 21801 Barton Road, Grand Terrace, California. A Toyota truck bearing license number 6M10607 (California) was inspected. The driver, Mr. Juan Manuel Olmos Moreno did not have valid drivers' license, and he stated that he worked for Respondent. He could not produce a Waste Tire Registration Certificate for the Toyota truck. Further, he could not produce a Waste Tire Manifest for the tires he was then transporting in the Toyota pick up truck. Mr. Moreno had no such documents in his possession.

(B) Respondent had been registered as a Waste Tire Hauler in 2001 and was thereby aware of the obligation to hold such a registration. He did not apply for such a registration in 2002.

4. The violation set forth in Finding 3(A), above, was a single act on a single day, and there is no evidence of any history or pattern of such conduct. Rached has subsequently undertaken to obtain a valid waste tire hauler permit.

5. The factual findings made herein above are based upon Respondent's written stipulation, and he affirmed the execution of the stipulation and his agreement thereto at the hearing held October 9, 2003, as well as his agreement to the issuance of this decision and its assessment of penalties.

6. (A) Respondent stipulated to take certain actions on his part, and further stipulated that the Board may issue this Decision based on their stipulation, and may take certain actions through this Decision, and to otherwise enforce the terms and conditions of the stipulation. The Respondent entered into the stipulation freely and voluntarily. No representations or promises of any kind, other than those set forth in the parties' stipulation, were made by any party to the stipulation in order to induce any other party to enter into it.

(B) The parties agreed in writing that the stipulation could not be altered, amended or modified or otherwise changed except by a writing executed by each of the parties to the stipulation.

(C) The parties agreed in the stipulation to execute and deliver any and all documents, and to take any and all actions necessary or appropriate to consummate the stipulation and to carry out its terms and provisions.

(D) The parties agreed that the stipulation would be binding on, and inure to the benefit of the successors, heirs, and assigns of the parties to the stipulation.

(E) The parties agreed that the stipulation and Decision would constitute the entire understanding of the parties concerning settlement of the above-captioned proceeding. They agreed there were no restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the stipulation or in separate written documents delivered or delivered with the stipulation. The parties agreed that they had not relied on any restrictions, promises, warranties, covenants, undertakings, or representations other than those expressly set forth in the Stipulation.

7. In the stipulation, which references a draft from of decision, the parties agreed to the payment of penalties of \$1,000.00, not to be converted into a judgment unless there is a default by Respondent under the stipulation. Further, it was agreed that if Respondent makes payment of \$800.00, in eight monthly installments of \$100.00, then that lesser amount would be deemed full performance of the obligation to pay a penalty of \$1,000. However, if he defaults on payment, then the entire balance of \$1,000.00 shall be due, less any prior payment. Further, he shall pay interest and attorneys fees if and when the Decision became a judgment due to any default.

8. Based on the stipulation and Respondent's statements during the telephonic hearing, it is found that he knowingly and willingly entered into the stipulation.

LEGAL CONCLUSIONS

1. The Board has the authority to regulate and conduct enforcement actions regarding and pertaining to Waste Tire Haulers within California under the Public Resources Code ("PRC"), sections 49250 et. seq. and per regulations set out in Title 14, California Code of Regulations ("CCR").

2. Jurisdiction to proceed, and to enter this decision and order was established pursuant to the PRC, including section 42962, noted below, and section 11415.60 of the Government Code. This Conclusion is based on Legal Conclusion 1, and Factual Findings 1, 2, 3(B), 5 and 6.

3. The Board's authority to assess civil penalties against Respondent is set forth in PRC section 42962, which provides that those who violate the applicable laws may be liable for up to \$25,000.00 per violation, for each day a violation occurs. Liability for penalties may result from negligent violations of the law, as well as from intentional acts.

4. Respondent violated PRC section 42951(a), in that he hauled waste tires on a public road without a registration, based on Factual Finding 3.

5. Respondent's violation of PRC section 42951(a) constitutes cause to assess a civil penalty against Respondent pursuant to section 42962 of the PRC, based on Legal Conclusions 1 through 4 and the factual predicates of those Conclusions.

6. The parties agreed upon a penalty, and terms and conditions for payment, and enforcement of the agreement in the event of the default, as generally described in Factual Findings 5 through 8. The penalty is reasonable in all the circumstances, and takes into account the facts set forth in Factual Finding 3(B), and PRC section 42852.

7. To facilitate enforcement, some language of the stipulation may be modified herein, and especially in the order following, so that words of agreement may become words of command. In the event there is any question of interpretation of the parties' obligations and rights under this Decision, the stipulation may be referenced for purposes of interpretation. This conclusion is based on Factual Finding 7(E), and Civil Code section 1642, and the terms of the parties' stipulation.

ORDER PURSUANT TO STIPULATION AND PROPOSED FORM OF DECISION

Based on the parties' stipulation the following orders are made:

1. Respondent Rached shall pay to the CIWMB the sum of \$1,000.00 as a civil penalty for the violations established herein and by the parties' stipulation.

Provided, however, that if he pays the sum of \$800.00 in eight monthly installments of \$100.00, then his obligation to pay a civil penalty shall be deemed satisfied. Payments shall be made to the CIWMB at P.O. Box 4025, Sacramento, California, 95812, attention Janice Kubit, or to such other agent or at such other place as the Board or its authorized agent may designate in writing. If any payment is not received within five days of the due date then he shall be deemed in default hereunder, and the Board may enforce the stipulation and decision. **The first monthly payment shall be due thirty (30) days after the effective date of this decision.**

2. Respondent shall not engage in hauling waste or used tires without a proper and valid registration as a Waste Tire Hauler, first obtained from the Board. Upon presentation of proper credentials, he shall allow CIWMB staff or agents, or the San Bernardino County Department of Environmental Health, or the Californian Highway Patrol to inspect and investigate vehicles, property or facilities operated by Respondent, to examine waste tire registration documents and manifests, and to take photographs of such properties or facilities.

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3. The Board may present this decision and the underlying stipulation and proposed form of decision as evidence in any proceeding to enforce this decision, to establish the parties rights and obligations hereunder.

April 13, 2004

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings